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Patent - EVU-02-PUSA

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Amon et al.) **Group Art Unit: Unknown**
Serial No.: 10/001,761)
Filed: October 31, 2001) **Examiner: Unknown**
For: Apparatus And Method For Providing)
A Provider-Selected Message In)
Response To A User Request For)
User-Selected Information)

**DECLARATION OF NEAL M. COHEN IN SUPPORT OF
PETITION TO THE COMMISSIONER****RECEIVED**

SEP 26 2002

Assistant Commissioner for Patents
Washington, D.C. 20231

OFFICE OF PETITIONS

Sir:

1. I am a registered patent attorney, registration number 41,683, and am the attorney of record in the above-captioned application ("the application"), which is a continuation of Application Serial No. 08/912,991 ("the parent application"), now abandoned.

2. **December 20, 2001:** On December 20, 2001, the file for the application was transferred to my office from the law firm of Stetina, Brunda, Garred, & Brucker, LLP ("Stetina"), which previously represented Applicants in prosecuting the parent application (08/912,991). The file as transferred to my office included only a copy of the application papers as filed. There were no papers which originated from the Patent Office.

3. **December 31, 2001:** On December 31, 2001, I contacted the Examiner who was responsible for the parent application, Examiner Bradley Edelman, and informed him that I was the attorney responsible for the application, and was in the process of gathering the necessary documents to file a Power Of Attorney. I inquired as to whether the application had been assigned to an Examiner yet, and was informed that it had not been. He informed me that he could not confirm that the application had even been filed at that time.

CERTIFICATE OF TRANSMISSION (37 C.F.R. §1.8a)

I hereby certify that this paper (along with any referred to as being attached or enclosed) is being transmitted to Ms. Stokes at the PTO by fax to (703) 308-7749 on the date shown below.

September 9, 2002
Date of Transmission
Neal M. Cohen

Patent - EVU-02-PUSA

4. **January 14, 2002:** On January 14, 2002, I again contacted Examiner Edelman and inquired as to the status of the application. He informed me that he still could not confirm that the application had been filed. Later that same day, I received from Stetina, a copy of the Return Postcard with the PTO stamp, indicating the application had in fact been filed on October 31, 2001. I promptly contacted Examiner Edelman to inform him that I had the postcard, and I then faxed a copy of same to him. (See Exhibit A included herewith).

5. **February 4, 2002:** On February 4, 2002, I again contacted Examiner Edelman and inquired as to the status of the application. I was informed that the application had still not been assigned.

6. **March 12, 2002:** On March 12, 2002, I mailed in a Power of Attorney in relation to the parent application. The Power Of Attorney included 6 Exhibits totaling over 60 pages, which were required to evidence the proper chain of title. I contacted Examiner Edelman and informed him that the Power Of Attorney was mailed.

7. **April 19, 2002:** On April 19, 2002, I again contacted Examiner Edelman, and inquired as to the status of the application, including the Power of Attorney. Examiner Edelman informed me that an Interview Summary of our January 14, 2002 conversation had been mailed out re: the parent application, to the law firm of Levin & Hawes, LLP (the correspondence address on record at the time).

8. **April 22, 2002:** On April 22, 2002, I contacted Levin & Hawes, LLP, and obtained a fax copy of the interview summary from them that same day. (See Exhibit B included herewith).

9. **May 22, 2002:** On May 22, 2002, I received a confirmation from the Patent Office that the Power Of Attorney filed regarding the parent application had been accepted. Nonetheless, I could not locate the application on PAIR under my customer number.

10. **July 9, 2002:** On July 9, 2002, I left a voicemail for Examiner Edelman, inquiring as to the status of the application, including the Power Of Attorney and assignment documents I had previously sent for recording. I still could not locate the application on PAIR under my customer number.

Patent - EVU-02-PUSA

11. **July 10, 2002:** On July 10, 2002, I again spoke with Examiner Edelman, and inquired as to the Power Of Attorney, the correspondence address, and the recording of the assignment documents. He suggested I re-file the Power Of Attorney in the application, as the parent had gone abandoned.

12. **July 16, 2002:** On July 16, 2002, I mailed in a Power Of Attorney for the application, which included a statement that a Power Of Attorney had been previously filed in the parent application.

13. **August 26, 2002:** On August 26, 2002, I still could not locate the application on PAIR under my customer number. I left a voicemail for Examiner Edelman to contact me with any information regarding the application.

14. **August 30, 2002:** On or about Friday, August 30, 2002, I received a voicemail from Ms. Stokes at the Patent Office. I returned the phone call and spoke with Ms. Stokes to learn that the application was abandoned for failure to respond to a Notice To File Corrected Application Papers. She informed me that the Notice was mailed to Stetina. I then contacted Examiner Edelman and discussed the matter with him, and informed him that I would work with Ms. Stokes to try to resolve the matter. I then contacted Stetina, and learned that Stetina had received the Notice, and had forwarded same to their docketing department. I requested a statement from Stetina regarding their correspondence with the Patent Office regarding the application.

15. **September 3, 2002:** On Tuesday, September 3, 2002, I began to reconstruct the events leading up to August 30, 2002, through letters to my clients, correspondence between my office and other law firms, invoices, and written communications with the Patent Office, all in preparation for drafting the present petition.

16. **September 4, 2002:** On September 4, 2002, I contacted Ms. Stokes to inform her I would be filing the present petition. She informed me that I could fax it directly to her at (703) 308-7749.

17. **September 5, 2002:** On September 5, 2002, I received a letter from Stetina in response to my request on August 30th. A copy of the letter is included herewith as Exhibit C.


Patent - EVU-02-PUSA

18. Based on the foregoing, I respectfully submit that I have attempted to diligently prosecute the application at all times, and despite such diligent efforts, I was unaware until August 30, 2002, that a Notice To File Corrected Application Papers had been mailed. I frequently checked with the Examiner of the parent application, as well as on the PAIR system, yet was unable to confirm the status of the application.

Respectfully submitted,

September 9, 2002

Dated



Neal M. Cohen
Reg. No. 41,683
(949) 724-1849

EXHIBIT A
(3 pgs)

LAW OFFICES OF
NEAL M. COHEN2424 S.E. BRISTOL STREET, SUITE 300
NEWPORT BEACH, CALIFORNIA 92660-0767

TELEPHONE: (949) 724-1849

FAX: (949) 724-8806

E-MAIL: nmc@nmcohen.com

FACSIMILE TRANSMITTAL FORM

To: Examiner B. Edelman USPTO	Fax Number: 703 746-5494	Phone Number: 703 306-3041
From: Neal M. Cohen	Fax Number: 949 724-8806	Phone Number: 949 724-1849
Re: Serial No. 08/912,991	Date/Time sent: 1/14/02 1:35 PM PST	No. of Pages: 2 (incl. cover)
Client Name: eVU Technologies, Inc. SpeedVu, Inc.	Client Matter No.: EVU-02-PUSA	

Examiner Edelman:

As a follow-up to our phone conversation a few minutes ago, attached is a copy of the return postcard with the PTO stamp showing a filing date of October 31, 2001 for the continuation application filed in the above-referenced matter. I received this postcard today from the law firm which filed the application.

If you have any questions, please call.

Sincerely,

Neal M. Cohen
Reg. No. 41,683**EXHIBIT A #1**

This fax transmittal is intended only for the use of the individual or entity to which it is addressed, and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If you are not the intended recipient or the employee or agent responsible for delivering this transmittal to the intended recipient, any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify me by telephone, and return the original message to me by mail at the above address. Thank you.

Dear Sir:

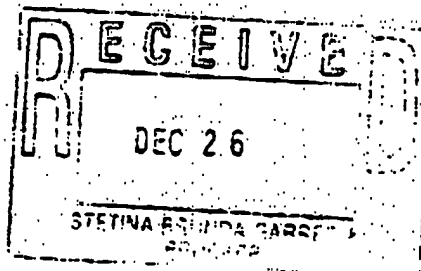
Please date stamp and return this card, adding the serial number assigned where applicable.

1000 U.S. Pro Express Mail
10/001761 EV 015374865 US
10/31/01 (KMS/cat)

Date Mailed: October 31, 2001 Docket No.: BRNET-001C
Serial No.: Unknown
Filing Date: Herewith
Title: PROVIDER-SELECTED MESSAGE IN RESPONSE TO USER REQUEST

Papers transmitted herewith: Certificate of Mailing; Utility Patent Application Transmittal; Fee Transmittal, in duplicate; Check for \$538.00; Copy of Utility Patent application for parent application No. 08/912,911 (18 pages); Copy of drawings from parent application (2 sheets); Copy of Declaration of Inventor from parent application (2 pages); Copy of Assignment from parent application (1 page).

EXHIBIT A, Pg 2



HP LaserJet 3100
Printer/Fax/Copier/Scanner

SEND CONFIRMATION REPORT for
LAW OFFICES
9497248806
Jan-14-02 13:40

Job	Start Time	Usage	Phone Number or ID	Type	Pages	Mode	Status
195	1/14 13:39...	0'59"	USPTO	Send	2/ 2	EC144	Completed
Total		0'59"	Pages Sent: 2		Pages Printed: 0		

LAW OFFICES OF
NEAL M. COHEN

ONE LAW CENTER DRIVE, SUITE 200
NEWTON, MASSACHUSETTS 02459-1000
TELEPHONE: (617) 552-0000
FAX: (617) 552-0000
E-MAIL: ncohen@att.net

PATENT TRANSMITTAL FORM

To: Stephen A. Edelman USPTO	Fax Number: 703 746-5404	Phone Number: 703 746-5061
From: Neal M. Cohen	Fax Number: 949 724-8806	Phone Number: 949 724-1000
Re: Serial No. 08701501	Class/Class Subcl. 17422 (1) F2705	No. of Pages: 2 (incl. cover)
Class Number: EPU Technology, Inc.	Class Number No.: EPU-20-PC1A	
Serial No.: 08701501		

Examiner Reference:

As a follow-up to our phone conversation a few minutes ago, enclosed is a copy of the patent application with the PTO stamp showing a filing date of October 31, 2001. In the questionnaire application that is the above referenced matter, I received the printed reply from the law firm which filed the application.

If you have any questions, please call.

Sincerely,


Neal M. Cohen
Reg. No. 41,600

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EXHIBIT A, P93

EXHIBIT B
(3 pgs)



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20530
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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08/912,991

08/11/1997

THOMAS C. AMON

9124-003

5248

7590

03/12/2002

PHILIP H. HAYMOND
LEVIN & HAWES LLP
384 FOREST AVE., SUITE 13
LAGUNA BEACH, CA 92652

EXAMINER

EDELMAN, BRADLEY E

ART UNIT

PAPER NUMBER

2153

DATE MAILED: 03/12/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

EXHIBIT B 1

Notice of Abandonment

Application No.

08/912,991

Examiner

Bradley Edelman

Applicant(s)

AMON ET AL.

Art Unit

2153

— The MAILING DATE of this communication appears on the cover sheet with the correspondence address—

This application is abandoned in view of:

1. ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on 19 June 2001.
 - (a) ☐ A reply was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply (including a total extension of time of _____ month(s)) which expired on _____.
 - (b) ☐ A proposed reply was received on _____, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection. (A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
 - (c) ☐ A reply was received on _____ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
 - (d) ☒ No reply has been received.
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
 - (a) ☐ The issue fee and publication fee, if applicable, was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
 - (b) ☐ The submitted fee of \$ _____ is insufficient. A balance of \$ _____ is due.
The issue fee required by 37 CFR 1.18 is \$ _____. The publication fee, if required by 37 CFR 1.18(d), is \$ _____.
 - (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
 - (a) ☐ Proposed corrected drawings were received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply.
 - (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interference rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☐ The reason(s) below:

EXHIBIT B pg 2


CLAYTON B. BURGESS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

Interview Summary	Application No.	Applicant(s)	
	08/012,991	AMON ET AL.	
	Examiner	Art Unit	
	Bradley Edelman	2153	

All participants (applicant, applicant's representative, PTO personnel):

(1) Bradley Edelman

(3) _____

(2) Neal Cohen

(4) _____

Date of Interview: 14 January 2001

Type: a) ☒ Telephonic b) ☐ Video Conference

c) ☐ Personal [copy given to: 1) ☐ applicant 2) ☐ applicant's representative]

Exhibit shown or demonstration conducted: d) ☐ Yes e) ☒ No

If Yes, brief description: _____

Claim(s) discussed: _____

Identification of prior art discussed: _____

Agreement with respect to the claims f) ☐ was reached. g) ☐ was not reached. h) ☒ N/A.

Substance of interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: Examiner inquired into whether Applicant intended to abandon the case. Applicant informed Examiner that a continuation had been filed, and that Applicant had no intention to continue to prosecute this case. Instead, prosecution will continue for the continuation of this case, which is application number 10/01761.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

i) ☒ It is not necessary for applicant to provide a separate record of the substance of the interview (if box is checked).

Unless the paragraph above has been checked, THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN ONE MONTH FROM THIS INTERVIEW DATE TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on rev rse side or on attached sheet.

EXHIBIT B 13



Examiner Note: You must sign this form unless it is an Attachment to a signed Office action.

Examiner's signature, if required

EXHIBIT C
(2 pgs)

LAW OFFICES

Stetina Brunda Garred & Brucker

A PROFESSIONAL CORPORATION

PATENT, TRADEMARK, COPYRIGHT AND UNFAIR COMPETITION CAUSES

75 ENTERPRISE, SUITE 250
ALISO VIEJO, CALIFORNIA 92656KIT M. STETINA
BRUCE B. BRUNDA
WILLIAM J. BRUCKER
MARK B. GARRED
MATTHEW A. NEWBOLES
ERIC L. TANIZAKI
LOWELL ANDERSONDARREN S. DIMER
MARLENE KLEIN
IN H. KIM
STEPHEN T. KANG
SEAN O'NEILLTHOMAS E. YESBIT
JESSIE WANGTELEPHONE (949) 855-1246
FACSIMILE I (949) 855-6371
FACSIMILE II (949) 716-8197
email@stetinalaw.com
www.stetinalaw.comWriter's Direct E-mail:
mklein@stetinalaw.com

September 3, 2002

Neal M. Cohen
2424 S. E. Bristol Street, Suite 300
Newport Beach, CA 92660-0757RE: BRNET-001C
Serial No.: 10/001,761**EXHIBIT C**
(Pg 1)

Dear Neal:

Pursuant to your telephone conversation of August 30, 2002 with Marlene Klein, enclosed is a statement of the facts regarding our correspondence with the USPTO in relation to the above-identified application.

Pursuant to instructions of our client, we filed a continuation application on October 31, 2001.

In early December, 2001 we were notified by our client that they would be transferring this file to another attorney.

On December 14, 2001, we received a facsimile from you (Neal M. Cohen) notifying us that the client had requested that the file be transferred to your office. Pursuant to this request, we faxed a copy of the filed continuation application to your office. A copy of the file was subsequently sent to your office via U.S. Mail on December 20, 2001. At this point, nothing had been received from the USPTO, including the return postcard.

You informed Marlene Klein that you wanted to file a Revocation of Power of Attorney and new Power of Attorney and change of Correspondence Address and asked that we provide you with the serial number as soon as we received it. Ms. Klein requested that the return postcard be delivered it to her when it was received so that we could forward this information to you.

Stetina Brunda Garred & Brucker

September 3, 2002

Page 2

On December 26, 2001, the return postcard, Filing Receipt and Notice to File Corrected Parts were received. Per Ms. Klein's request, the postcard was forwarded to her. The Filing Receipt and Notice to File Corrected Parts were forward to our docketing department.

On January 10, 2002, Ms. Klein forwarded a copy of the return postcard including the assigned serial number to you.

Because the file had been transferred, our docketing department had no active file with which to match the Notice to File Correct Parts.

We received a phone call from you on August 30, 2002 informing us that the application had been abandoned. Our office did not receive a Notice of Abandonment. During that phone conversation, you asked us to prepare a statement regarding our correspondence with the USPTO. In relation to the above-identified application. This letter was prepared in response to that request.

If you have any questions, please contact Marlene Klein.

Very truly yours,

STETINA BRUNDA GARRED & BRUCKER



Kit M. Stetina

KMS/MK

\\Client Documents\BRNET\001\C\090302\mnc\NC.wpd

EXHIBIT C
(Pg 2)

COPY**UNITED STATES PATENT AND TRADEMARK OFFICE**COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov

APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
10/001,761	10/31/2001	Thomas C. Amon	BRNET-001C

007663

STEFINA BRUNDA GARRED & BRUCKER
75 ENTERPRISE, SUITE 250
ALISO VIEJO, CA 92656

CONFIRMATION NO. 5829

FORMALITIES LETTER



OC000000007219864

Date Mailed: 12/20/2001

NOTICE TO FILE CORRECTED APPLICATION PAPERS**Filing Date Granted**

This application has been accorded an Application Number and Filing Date. The application, however, is informal since it does not comply with the regulations for the reason(s) indicated below. Applicant is given **TWO MONTHS** from the date of this Notice within which to correct the informalities indicated below. Extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 CFR 1.136(a).

The required item(s) identified below must be timely submitted to avoid abandonment:

- The Claim(s) commencing on a separate sheet (37 CFR 1.75(h)).

*A copy of this notice **MUST** be returned with the reply.*

Customer Service Center

Initial Patent Examination Division (703) 308-1202

PART 3 - OFFICE COPY